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[Additional Counsel on Signature Page]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE WELLS FARGO & COMPANY
SHAREHOLDER DERIVATIVE
LITIGATION

Lead Case No. 3:16-cv-05541-JST

**JOINT CASE MANAGEMENT
STATEMENT**

The Honorable Jon S. Tigar

Date: August 10, 2018
Time: 1:30 p.m.
Courtroom: Courtroom 9, 19th Floor

The parties in the above-captioned consolidated derivative action hereby submit this Joint Case Management Statement in advance of the Telephonic Case Management Conference on August 10, 2018 at 1:30 p.m.

I. Telephone Number for Conference

Lead Plaintiffs will initiate the conference call using the following dial-in:

Dial-In: 1-888-330-1716

Passcode: 5168552

II. Status of Discovery

A. Discovery Propounded by Plaintiffs

1. Discovery from Nominal Defendant Wells Fargo

Plaintiffs served their First Set of Document Requests on Wells Fargo on November 3, 2017, and Wells Fargo served objections and responses to the Requests on December 15, 2017. Plaintiffs served their Second Set of Document Requests on Wells Fargo on March 12, 2018, and Wells Fargo served objections and responses to those Requests on April 11, 2018.

The parties have met and conferred extensively regarding those Requests and, as of July 2, 2018, have agreed upon a comprehensive set of search parameters (including more than 50 custodians and hundreds of search terms), subject to potential further meet-and-confer discussions based on information produced in discovery.

Wells Fargo has begun producing documents in response to those Requests. To date, Wells Fargo has produced approximately 255,000 pages of documents to Plaintiffs. Wells Fargo anticipates making approximately six to eight additional productions over the coming weeks in advance of the substantial completion deadline of September 14, 2018.

2. Discovery from Individual Defendants

Plaintiffs served their First Set of Document Requests on the Individual Defendants on May 9, 2018, and the Individual Defendants served responses and objections to the Requests on June 8, 2018. The Director Defendants served a single set of responses and objections, and each of the Officer Defendants (Defendants Stumpf, Sloan, Tolstedt, Shrewsberry, and Loughlin) served separate responses and objections to Plaintiffs' Requests. On July 6, 2018, Plaintiffs sent

1 substantially similar letters to each of the Officer Defendants seeking additional information with
2 regard to their responses and objections. Specifically, Plaintiffs requested among other things
3 that the Officer Defendants confirm that they (i) are continuing to preserve all relevant
4 documents, and (ii) conducted certain searches for information through the present day. Plaintiffs
5 also requested that the Officer Defendants provide additional information about the manner in
6 which they searched for responsive information. The letters requested dates to set up meet-and-
7 confer calls to discuss these issues and the Officer Defendants' objections and responses.
8 Plaintiffs' and the Officer Defendants' meet-and-confer discussions remain ongoing.

9 **a. Director Defendants**

10 Plaintiffs and the Director Defendants met and conferred on June 21 and July 19, 2018
11 regarding the Director Defendants' response to Plaintiffs' Requests for Production. The parties
12 are close to agreement on custodians and search terms, and anticipate resolving any outstanding
13 issues by the August 10 conference.

14 **b. Defendant Stumpf**

15 Defendant Stumpf responded to Plaintiffs' July 6 letter on August 3, 2018. Among other
16 things, Defendant Stumpf's counsel explained that to the extent he maintained Wells Fargo-
17 related emails, or other files, including files on his Wells Fargo-issued laptop and cell phone
18 leading up to his October 12, 2016 retirement, such files are in Wells Fargo's possession, custody,
19 or control. The parties anticipate scheduling a meet and confer in the coming week.

20 **c. Defendant Sloan**

21 Plaintiffs and Defendant Sloan met and conferred by telephone on August 2, 2018,
22 regarding Plaintiffs' July 6 letter. Counsel for Sloan represented and will confirm in writing that
23 Defendant Sloan has no responsive documents in his possession, custody, or control, in part
24 because he did not own any personal electronic devices that stored such documents, did not use
25 his personal email account for work-related matters, and did not keep at home hard copy
26 documents related to matters at issue in this case.

27 **d. Defendant Tolstedt**

28 Plaintiffs and Defendant Tolstedt met and conferred by telephone on July 24, 2018,

1 regarding Plaintiffs' July 6 letter. The parties are close to agreement on search terms and
 2 continue to discuss the relevant time period for searches. The parties anticipate resolving any
 3 outstanding issues by the August 10 conference. Defendant Tolstedt anticipates beginning
 4 production of documents by late August.

5 **e. Defendant Shrewsberry**

6 To date, Defendant Shrewsberry has not provided a response to Plaintiffs' July 6 letter.
 7 Defendant Shrewsberry's counsel has indicated that such a response is forthcoming. Plaintiffs
 8 anticipate that the parties will meet and confer thereafter.

9 **f. Defendant Loughlin**

10 Plaintiffs and Defendant Loughlin met and conferred by telephone on July 31, 2018,
 11 regarding Plaintiffs' July 6 letter. Counsel represented that Defendant Loughlin has no
 12 responsive electronic documents in his possession, custody, or control, in part because he did not
 13 own any personal electronic devices that stored such documents and did not use his personal
 14 email account until shortly before his retirement from Wells Fargo in July 2018. Defendant
 15 Loughlin has, however, identified 400 to 500 pages of relevant hard copy documents in his home
 16 and anticipates producing those documents to Plaintiffs by late August.

17 **3. Discovery from Third Parties**

18 Plaintiffs served third party subpoenas on the following entities in July 2018: American
 19 Express and PricewaterhouseCoopers. Plaintiffs are conferring with American Express with
 20 respect to the subpoena. Plaintiffs have not yet heard from Pricewaterhouse Coopers. Plaintiffs
 21 will promptly produce any documents obtained from third parties to Defendants.

22 Plaintiffs served third party subpoenas on the following entities on August 7, 2018:
 23 Accenture, Mercer, McKinsey, Frederic W. Cook and FTI.

24 **B. Discovery Propounded by Defendants**

25 Defendants have not propounded discovery on Plaintiffs or third parties to date.

26 **III. Other Discovery Issues that Are the Subject of Meet-and-Confer Discussions**

27 **A. Plaintiffs' Position on the Time Period for Production from Defendants**

28 Consistent with the Relevant Period alleged in the Complaint (January 1, 2011 through the

1 present), Plaintiffs' document requests seek documents through the present from all Defendants.
2 As Plaintiffs explained on meet and confer calls and correspondence, documents dated after the
3 initiation of the derivative lawsuits are relevant to both liability and damages. In particular, the
4 Oversight Committee, of which several Director Defendants were members, was formed in late
5 September 2016 and its work continued until release of the report in April 2017. Further, in
6 February 2018, many of the Director Defendants were party to a consent order with the Federal
7 Reserve that restricts the Company's growth, and that order arises from the activity alleged in the
8 Complaint. Plaintiffs believe the parties are close to reaching an impasse on this issue, and if so
9 will promptly bring it to the Court's attention. With respect to the Director Defendants, Plaintiffs
10 will continue to meet and confer concerning discovery of documents post-dating September 2016
11 in light of the Director Defendants' acknowledgement that discovery of certain documents
12 created after that date might be appropriate subject to reasonable limitations on scope. Plaintiffs
13 are open to discussing the relevance of such documents at the August 10 conference.

14 **B. Defendants' Position on the Time Period for Document Discovery**

15 Defendants understand that there is not presently a dispute ripe for the Court's
16 consideration. As noted above, the parties are either presently engaged in meet-and-confer efforts
17 on this and other topics (all individual Defendants) or have concluded their meet-and-confer
18 discussions and have already agreed upon the time period for searches on a Request-specific basis
19 (Wells Fargo).

20 As it concerns the Company, Plaintiffs and Wells Fargo engaged in extensive, months-
21 long meet-and-confer efforts that culminated in their agreement last month on a comprehensive
22 33-page search protocol that groups Plaintiffs' Requests into numerous categories and sets forth
23 custodians, search terms, and agreed-upon time periods for each category. For nearly all
24 categories, Plaintiffs and Wells Fargo agreed that the appropriate end date for searches is
25 October 31, 2016, more than a month after the first complaint was filed in this consolidated
26 action. That time period covers all categories of Requests that relate to potential liability. For
27 several specific categories of documents, which include those Requests concerning potential
28 damages and certain remedial actions, Wells Fargo has agreed to search through May 2018, some

1 20 months after inception of this consolidated action. While Wells Fargo appreciates that specific
2 documents identified through discovery may lead to follow-up meet-and-confer discussions,
3 Plaintiffs have identified no reason to revisit at this time the comprehensive discovery protocol
4 that they agreed to just last month.

5 Individual Defendants continue to meet and confer with Plaintiffs on their request for
6 documents created after the date of the Complaint. (As set forth above, this request principally
7 concerns the Director Defendants.) The Director Defendants believe that even if the parties are
8 unable to reach a complete agreement, they will at least be able to significantly narrow their
9 differences. All of Plaintiffs' claims relate to conduct that occurred entirely before the filing of
10 the complaint in September 2016. The Director Defendants maintain that an obligation to search
11 for, review and produce documents for all 68 of Plaintiffs' Requests for the period after the filing
12 of the complaint, with an unbounded timeframe, would create a disproportionate burden in
13 relation to Plaintiffs' need for discovery, especially in light of the potentially large number of
14 privileged documents from this period that the Director Defendants have in their possession,
15 custody, or control. Discovery of certain documents created after September 2016 may be
16 appropriate, but any search must be reasonably limited in scope, both with regard to subject
17 matter and timeframe. The Director Defendants are hopeful that, with additional time to meet and
18 confer, a solution amenable to all parties can be reached with regard to the scope and timeframe
19 of any search. Should the parties be unable to reach a compromise, they will bring the dispute to
20 the Court's attention promptly.

21 **C. Depositions**

22 Given that there are 20 Defendants in the case, the parties agree that more than the ten
23 depositions contemplated by Fed. R. Civ. P 30(a)(2) may be warranted. Plaintiffs have not
24 identified nor confirmed the precise number of any additional deponents, and the timing of any
25 such decision will depend on whether Defendants are able to meet the substantial completion
26 deadline of September 14, 2018, and the scope of the production at the end of the substantial
27 completion period. Plaintiffs currently project that they will need at least 40 fact witness
28 depositions. As soon as Plaintiffs determine the scope of the deposition effort, the parties will

1 promptly initiate the meet and confer process and, if necessary, raise the issue with the Court.

2 Defendants believe that such a large number of depositions — an average of more than
3 2.5 depositions per week before considering any depositions noticed by Defendants — will be
4 extremely difficult to complete in the currently scheduled fact deposition period, which stretches
5 over the fall and winter holidays and would impose significant burden in terms of preparation and
6 costs of counsel to attend. Plaintiffs acknowledged at the case management conference held July
7 18, 2018¹ that that the parties will need to confer regarding the current schedule. Defendants will
8 promptly meet and confer on this issue when Plaintiffs are prepared to present their proposal and
9 Defendants reserve their position in the meantime.

10 **D. Discovery Schedule**

11 The parties continue to meet and confer regarding production of documents. Plaintiffs
12 anticipate having a better idea about whether the discovery schedule will need to be modified in
13 early-September, as the deadline for substantial completion of document production approaches.
14 As noted above, Defendants do not believe that the current schedule allows for Plaintiffs' current
15 intentions for a large number of depositions and any further fact discovery, including discovery
16 served by Plaintiffs this week. The parties are open to discussing the schedule at the August 10
17 conference.

18 Dated: August 7, 2018

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

19 By: /s/ Richard M. Heimann

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25 ¹ See July 18, 2018 Case Mgm't Conf. Tr. at 7:24-8:5:

26 "Mr. Heimann: Let me say that in preparing for the hearing today, I came to share the
27 concerns that the defendants expressed in their portion of the case management
28 presentation, and so I do think we're going to need to talk soon about whether or not the
current schedule is realistic in view of the timing of the document production and the
numbers of depositions that it seems likely will be sought here."

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ATTESTATION PURSUANT TO GENERAL ORDER 45

I, Richard M. Heimann, in compliance with General Order 45, Section X(B), hereby attest that I
obtained the concurrence of all of the above-listed counsel in filing this document.

DATED: August 7, 2018

/s/ Richard M. Heimann